IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2667 of 2003

Date of Decision: 29-09-2004

BENU CHATTERJI

Versus

UNION OF INDIA

(for full cause title, see next sheet)

Coram:

The Hon'ble Mr.Justice Bhawani Singh, Chief Justice

The Hon'ble Mr.Justice H.K.Rathod, Judge

Whether approved for reporting?

For the Petitioner Mr.Paritosh Calla, Adv.

For the Respondents Mrs.Manisha Lavkumar, Adv.

PER: BHAWANI SINGH, CHIEF JUSTICE (ORAL):-

#. The petitioner joined Border Security Force as Combadised S1 (Stenographer, Grade-I). He was promoted to the rank of Assistant Commandant and took charge in 32 Bn. BSF on 12.7.1997. He retired as Assistant Commandant IRLA No.70009 from 32 Bn. BSF on completion of superannuation age, 55 years, rendering service for 31 years, 2 months, 21 days. Accordingly, his pay was calculated on this basis, meaning thereby, he was not paid full pension.

Whether reporters of Local Papers may be allowed to see the Judgment?

#. Consequently, the petitioner represented for giving him full pension taking his service for 33 years. In support of the claim, the petitioner relied on Apex Court decision in Raghu Nandan Lal Chaudhary and others v. Union of India (AIR 1988 SC 2125) and Division Bench Judgment of Delhi High Court in Shri Sant Ram v. Union of India and others (Annexure-E). In Raghu Nandan Lal Chaudhary and others v. Union of India (supra), the Apex Court held that:

> "These writ petitions under Article 32 of the Constitution are by three retired defence personnel. They maintain that their pension is not liable to be reduced by recovery of pension equivalent of gratuity out of it; they have asked for a declaration that the ceiling on the qualifying service in the case of service record optees should be 30 years instead of 33 years, particularly in respect of persons who retired at the age of 55 years; they have also asked for a direction for recomputation of their pension after the aforesaid reliefs have been granted.
>
> 2. A counter-affidavit has been filed on behalf of the Union of India denying the claim of the petitioners.
>
> 3. In view of the decision of this Court in Common Cause, a Registered Society v. Union of India, (1987)1 SCC 142 : (AIR 1987 SC 210), the 15 year period or the age of 70 years, as fixed therein, has to apply and learned counsel for the petitioners does not dispute this position. There can also be no dispute that pension equivalent of gratuity will be recoverable from 1st of January, 1986. The only other question which requires determination is whether the appropriate period of service should be 30 years or 33 years. At the relevant time when each of the petitioners superannuated, the retiring age was 55 years. We are of the view that the period of qualifying service as indicated therein should therefore be 30 years.
>
> 4. Petitioners should be entitled to the benefit on the aforesaid basis. A direction is accordingly issued to the Union of India to

extend the benefit on such basis. Writ petitions are accordingly disposed of with no order for costs."

The Apex Court decision has been followed by Division Bench, High Court of Delhi in Shri Sant Ram v. Union of India and others. The Division Bench said:

"In view of the judgement of the Supreme Court reported as AIR 1988 SC 2125 the petitioner having earned a right to receive full pension on completion of more than 30 years of service and his having been superannuated at the age of 55 years the petitioner is entitled to full pension."

#. The respondents, in reply to the petitioner's representation, informed the petitioner vide communication dated November 1, 2002, that benefit of full pension has been confined to petitioners who obtained judgment from High Court in their favour. This approach flies in the face of principle that judgment of the Court should be applied to similar cases without dragging the petitioners to seek independent remedy. Further, under Article 141 of the Constitution of India, law declared by the Supreme Court shall be binding on all Courts within the territory of India. Therefore, the case of petitioner is squarely covered by the decision of the Apex Court and Delhi high Court, with which we are in entire agreement and conditions coming into existence on change of superannuation age would not affect the claim of the petitioner.

#. Therefore, the petition is allowed. The petitioner is held entitled to full pension which may be refixed and paid, along with arrears, within two months from the date of receipt of writ of this order. Cost on parties. Rule is made absolute.

(BHAWANI SINGH)
CHIEF JUSTICE

(H.K.RATHOD)
JUDGE

(sunil)